

September 10, 2009

Randy Sekany  
President  
San Jose Fire Fighters, Local 230  
425 E. Santa Clara Street, Suite 300  
San Jose, CA 95113

**Re: Contract Negotiations**

Dear Randy:

On August 14, 2009, we sent you a response to the package proposal for settlement of negotiations that you had provided on August 10, 2009 (enclosed). We requested a response back from you by Friday, September 4, 2009, as to whether or not Local 230 would be open to offering a 12 to 18 month proposal with the terms outlined in the letter; however, we have not received such a proposal.

Instead, you sent an email on Monday, September 7, 2009, in which you provide some available dates to discuss the "\$1.7 savings proposal" you made to the City and to discuss the Cortex report, which provides recommendations on the governance structure for both of the retirement boards.

As we indicated in our response to your proposal, the City cannot accept Local 230's package proposal. For the City to accept a 12-18 month proposal, it would need to include a true wage freeze, which includes freezing the 5% automatic step increases, phasing in to fully pre-funding retiree healthcare, and not the other items Local 230 is proposing.

Since we have not received a response from Local 230 on the letter we sent you on August 14<sup>th</sup> and we continue to remain too far apart on a number of major issues (some of which you have identified as "dealbreakers"), the City believes we are at impasse and would like to proceed to mediation. The City will contact the California State Mediation and Conciliation Service and request a mediator. We will notify you once a mediator has been provided and will propose some dates for mediation consistent with the dates you provided in your letter.

Sincerely,



Alex Gurza  
Director of Employee Relations

Enclosure

c: Darryl Von Raesfeld, Fire Chief  
Teresa Reed, Assistant Fire Chief  
Jeff Welch, IAFF, Local 230 Vice-President

August 14, 2009

Randy Sekany  
President  
San Jose Fire Fighters, Local 230  
425 E. Santa Clara Street, Suite 300  
San Jose, CA 95113

**Re: Contract Negotiations**

Dear Randy:

This letter is in response to your e-mail of August 10, 2009, in which you provided a package proposal for settlement of negotiations over a successor Memorandum of Agreement between the City and Local 230. Since your new proposal mirrors in many respects the proposal Local 230 made on April 9, 2009, let me begin with a review of the April 9<sup>th</sup> proposal and subsequent events.

In a letter dated April 24, 2009 (enclosed), the City responded to the one-year proposal from Local 230 presented on April 9, 2009. That letter explained the City's concerns with some of the elements of Local 230's proposal, as well as key items for the City that were not included in the one-year proposal.

Specifically, Local 230's April 9<sup>th</sup> proposals do not include a "true zero" wage freeze since they did not include freezing the 5% automatic "step" increases. In addition, of particular concern was that Local 230's April 9<sup>th</sup> proposal did not address the critical issue of retiree healthcare. In the City's April 24<sup>th</sup> letter, we indicated that any agreement for a new contract must include full pre-funding of retiree healthcare. At our negotiation session on July 17, 2009, Local 230 expressed an interest in reaching a settlement on a short term contract. During the discussion, we reiterated the importance of fully pre-funding retiree healthcare.

At the July 17<sup>th</sup> meeting, Local 230 requested additional time to develop a settlement offer which would address the City's concerns and a meeting was scheduled for July 23, 2009. However, Local 230 sent an email on July 22<sup>nd</sup> cancelling the July 23<sup>rd</sup> meeting indicating that Local 230 had not yet received the retiree healthcare trust design from its actuary. In a reply email on July 22<sup>nd</sup>, I reiterated that the City's main interest related to retiree healthcare is an agreement on the funding of the retiree healthcare benefits and not on the model of how a new trust would be structured. I indicated that the City would be interested in a proposal from Local 230 that addresses how we begin fully pre-funding retiree healthcare benefits.

At the negotiation session on August 4, 2009, Local 230 presented a settlement proposal to the City's negotiating team, which you subsequently provided in writing on August 10, 2009 (enclosed). While we appreciate the proposal for no general wage increase for 18 months, the proposal includes all of the same items that were in Local 230's April 9<sup>th</sup> proposal and does not include key items such as a freeze on 5% automatic "step" increases. Most significantly, the proposal did not include a proposal on funding retiree healthcare benefits, but instead proposes a labor management committee to develop a trust fund and a funding plan.

As you know, Local 230 is the only employee unit that has not begun the phase-in to fully pre-funding retiree healthcare benefits. During the discussion of pre-funding retiree healthcare at the August 4<sup>th</sup> meeting, you indicated that pre-funding retiree healthcare would be contingent upon receiving a general wage increase and that employees could not receive a "loss in their pockets." In the City's proposal, both the City and employees will be increasing contributions to fund retiree healthcare benefits. Fully pre-funding retiree healthcare benefits will ensure that there is sufficient money to fund the benefits. This is particularly important given that as of June 30, 2007, retiree healthcare benefits are only 7% funded.

Local 230's proposal also includes changing from 24-hour to 48-hour shifts, a Disability Earnings Ordinance, and incorporation of the Firefighter Bill of Rights into the Memorandum of Agreement. These items were included in Local 230's April 9<sup>th</sup> proposal. The City continues to have the same concerns described in our April 24<sup>th</sup> letter. During the negotiation session on August 4<sup>th</sup>, you indicated that the 48-hour shift proposal was the "number one priority" for Local 230 members during these negotiations and could be a "deal breaker." The City has concerns with implementing a schedule in which firefighters regular schedule are shifts of 48 straight hours, which are the same concerns the City presented during the last arbitration. Although the proposal includes a provision that the schedule could be terminated by either the Fire Department or the union at any time, it is a major logistical undertaking to move all line personnel to this new schedule.

The 18-month proposal also includes additional items that are of concern, such as the proposal to reduce vacation slots for one year. Although this proposal could result in cost savings in the first year, it includes reverting to the previous vacation accrual system for two years, which the City prevailed on during the last arbitration. The current vacation accrual system was just implemented in 2009 for employees represented by Local 230 and the City is not interested in moving back to the previous system. Local 230's proposal would also obligate the City to allow Local 230 to place union decals on fire apparatus and helmets. The City does not agree to have non-City approved emblems or stickers on fire apparatus and helmets.

For the reasons described in this letter as well as the City's April 24<sup>th</sup> letter, the City declines Local 230's proposal. For the City to accept a 12-18 month proposal, it would need to include a true zero wage freeze, which includes freezing the 5% automatic step increases, phasing in to fully pre-funding retiree healthcare, and not the other items Local 230 is proposing.

We would appreciate hearing back from you by **Friday, September 4, 2009**, as to whether or not Local 230 would be open to offering a 12 to 18 month proposal with the terms outlined in this letter. If not, the City believes that we are too far apart on a number of major issues, including one of the City's major priorities (pre-funding retiree healthcare) and Local 230's "dealbreaker" (implementing the 48 hour shift schedule). In the absence of movement on those issues, we believe it would be beneficial to declare impasse and proceed to mediation.

We look forward to hearing back from you by Friday, September 4, 2009.

Sincerely,

A handwritten signature in black ink, appearing to read 'Alex Gurza', written over a horizontal line.

Alex Gurza  
Director of Employee Relations

Enclosures

c: Darryl Von Raesfeld, Fire Chief  
Teresa Reed, Assistant Fire Chief  
Jeff Welch, IAFF, Local 230 Vice-President

April 24, 2009

Randy Sekany  
President  
San Jose Fire Fighters, IAFF, Local 230  
425 E. Santa Clara Street, Suite 300  
San Jose, CA 95113

**Re: Response to One Year Proposal**

Dear Randy:

We sincerely appreciate Local 230's commitment, expressed in your March 27, 2009 letter, to leading the way in assisting the City with the challenges created by present economic circumstances. As you know, the City's fiscal situation has continued to worsen. Most recently, we have learned that the shortfall in the coming fiscal year has increased by \$14 million as a result of declining property tax revenues. This increases the City's budget deficit in 2009-2010 to an estimated \$77 million. The City has also received information about potentially significant increases in pension contribution rates beginning in 2010. (Please see attached memos.)

On April 9, you presented your complete one year proposal. As we discussed during our meeting of April 23, 2009, while we can accept Local 230's proposal of a one year wage freeze, we are not able to accept Local 230's one year package proposal because of additional items included in the April 9 proposal, and, equally important, because some key items are not included in the offer.

One issue of particular concern is that Local 230's one year proposal does not address the critical issue of retiree healthcare. As you know, the City and employees have a significant unfunded retiree healthcare liability. Eight out of the City's ten unions have now agreed to fully pre-funding retiree healthcare beginning in July 2009, and an agreement on this issue is essential to the continued viability of the City's retiree healthcare benefits. Any agreement for a new contract with Local 230 must include full pre-funding of retiree healthcare. At our meeting of April 23<sup>rd</sup>, we provided you with the agreement we reached with the San Jose Police Officer's Association, which is the language we are seeking for Local 230.

Below is a brief discussion of the other major issues.

Wages

Local 230's one year proposal includes no base wage increase for fiscal year 2009-2010. However, as clarified in Local 230's April 9 proposal, the wage freeze offer does not contemplate freezing employee step increases. As you know, employees' pay goes up not only through negotiated general wage increases, but also through 5% automatic "step" increases that generally occur annually until an employee reaches the top of the pay scale. The City is interested in a wage freeze for 2009-2010 that includes freezing step increases.

#### 48/96 Shift Schedule

Local 230's one year proposal includes a change to the existing work schedule for Fire employees who currently work 24-hour shifts. The current schedule worked by San Jose Fire Fighters is a very common schedule among Fire Departments in other cities. The schedule proposed by Local 230 would require employees to work a continuous 48-hour shift, with 4 days (96 hours) off in between the 48-hour shifts.

As the City demonstrated in the last interest arbitration, there are significant problems with a schedule that requires employees to regularly work 48 straight hours. The concerns with scheduling firefighters to work 48 hour shifts as their regular schedule include the effects of fatigue, which could lead to increased accidents, injuries and impaired judgment and decision-making when responding to 9-1-1 calls. The proposed schedule would decrease the number of shifts per month from 10 to 5. We are not aware of evidence that a schedule in which firefighters work 48 straight hours would benefit the Fire services delivered to the residents of San Jose.

#### Taxes Paid by Employees Receiving Supplemental Workers Compensation Income

As you know, San Jose Fire Fighters receive compensation in addition to regular Workers' Compensation benefits. Under the provisions of the current contract, a Fire Fighter who is eligible for Workers' Compensation temporary disability payments receives a supplement to the state mandated amount of Workers' Compensation payments so that Fire Fighters receive 100% of their pay for up to one year while on temporary disability.

Local 230's one year package proposal asks the City Council to adopt an ordinance with the intent of classifying the supplemental Workers' Compensation benefits in a manner that would make them exempt from income taxation.

Work-related injuries and disabilities, as well as the benefits for injured and disabled employees are very important and complex issues. As you know, the City Auditor's Office recently issued an audit on the City's workers compensation program, which includes recommendations to address the findings of the audit. We are more than willing to engage in a discussion regarding changes in disability benefits, but given the complexity of these issues, we do not believe that this discussion is suited to a simple one year agreement. If we cannot reach a quick agreement on a one year contract, we can certainly discuss this proposal in more detail, along with City proposals regarding disability benefits.

#### Firefighters Bill of Rights—California Assembly Bill 220

Local 230's one year proposal also includes a provision to incorporate the Firefighter Bill of Rights into the union contract. As you know, the Firefighter Bill of Rights is a state law contained in the California Government Code that primarily is related to the rights of fire fighters who are being investigated for misconduct. For the City, complying with all of the various legal protections that apply to employees and specifically those that apply to government employees is a priority. Although we do not include all of the many laws and legal protections that apply to employees in the union contracts, we look forward to continuing to work with Local 230 on the issues raised by the Firefighters Bill of Rights for the City of San Jose. Our understanding is that Local 230 recently filed a court action against the City related to the Firefighters Bill of Rights. Hopefully, the various issues relating to this new law will be resolved and clarified through our attorneys.

Randy Sekany  
RE: Response to One-Year Proposal  
April 24, 2009  
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Discussion on Fire Companies and Stations

In proposing no general wage increase in 2009-2010, Local 230 indicates that it is doing so in order to assist the City in maintaining all current fire companies and stations. Given the City's fiscal situation, many difficult decisions must be made. Unfortunately, these decisions will include elimination of City jobs across the many City departments and a corresponding reduction in services to our community. The City welcomes Local 230's leadership in assisting the City to lessen the reduction in services to our community by helping us to address the growth in our personnel costs.

You indicated that you will be out of town from April 29<sup>th</sup> until May 6<sup>th</sup> and consequently Local 230 will not be able to meet with us again until at least May 7, 2009. We would appreciate hearing back from you before you leave on April 29<sup>th</sup> as to whether or not Local 230 would be open to a one year agreement with the terms outlined in this letter and discussed at our meeting on April 23<sup>rd</sup>.

We hope that we can reach a quick agreement. However, if we cannot reach an agreement quickly on the terms of one year agreement, we would like to begin scheduling frequent and regular negotiations sessions so that we can begin making proposals on the various items on both the City's and Local 230's list of issues.

Once again, we appreciate Local 230's one year proposal and look forward to hearing back from you.

Sincerely,

/s/

Alex Gurza  
Director of Employee Relations

Enclosures

c: Jeff Welch, Local 230 Vice President  
Darryl Von Raesfeld, Fire Chief  
Teresa Reed, Assistant Fire Chief

L230 Settlement Proposal  
August 4, 2009

1. Extend without change or modification all economic terms and conditions of the existing Memorandum of Understanding covering the wages, hours and benefits of Local 230 members for a period of 18 months from July 1, 2009 until December 31, 2010;

The intent of #1 is to freeze *base wage compensation (0% increase)* that would otherwise increase by virtue of a general wage increase. In doing so Local 230 seeks to assist policymakers in maintaining all current fire companies and stations. This freeze does not affect step or promotional increases.

2. For purposes of future negotiations all parties agree that this freeze in compensation does not necessarily place Local 230 members in the appropriate labor market position.
3. Starting in January of 2010 and ending in January of 2011 the number of vacation slots in the ranks of fire fighter, fire engineer and fire captain will be reduced by 3. The vacation accrual cap will be lifted for the period of January 1, 2010 through January 1, 2012. This proposal will generate approximately **\$1.3 million in overtime costs.**
4. The parties agree to meet and confer over the \$150 medical insurance premium cap when 10% of the lowest priced plan exceeds \$150.
5. The parties will form a labor management committee to develop a and trust fund and funding plan for retiree healthcare
6. Implement the 48/96 work schedule approximately January 1, 2010 under the same conditions proposed by L230 in the last negotiations (see addendum)
7. City to enact a Disability Earnings Ordinance as soon as possible and no later than September 1, 2009 consistent with the attached memo to the Rules Committee of November 26, 2008. (see addendum)
8. City and L230 to immediately incorporate into Article 20 of the MOU the "Fire Fighter Bill of Rights" as mandated by state law. (see addendum)
9. City to allow the placement of IAFF decals on the fire apparatus and helmets in agreed upon locations

NOTE: Acceptance of this proposal will allow the city to save approximately \$400,000 in contract legal fees. This savings combined with the savings derived from item 3 provides the City with **\$1.7 million** in savings during the 18 month term of the agreement.



UNION'S FINAL PROPOSAL ON ISSUE NUMBER 25 -- 48/96 WORK  
SCHEDULE

ARTICLE 14 HOURS OF WORK AND OVERTIME

14.11.2 Effective January 1, 2008 or as soon thereafter as practicable, the fifty six (56) hour shift shall be worked on a 48/96 schedule for a period of one year. At any time during this year, the Union or the Department may elect to revert back to the current schedule from the 48/96 schedule.



# MEMORANDUM

TO: Rules Committee

FROM: Vice Mayor Dave Cortese

SUBJECT: Disability Earnings Ordinance

DATE: November 26, 2008

APPROVED:

*Dave Cortese*

DATE:

## RECOMMENDATION

It is recommended that the Rules Committee direct staff to bring to Council within 45 days a draft ordinance that legally classifies supplemental disability income as compensation earned in the context of a workers compensation program

## BACKGROUND

Under current state statute (Labor Code 4850), a police officer or fire fighter in the State of California, if injured in the course of employment, is afforded the equivalency of his/her full salary through workers compensation benefits, provided that he/she is a member of the Public Employees Retirement System (PERS) or is covered under the 1937 County Retirement Act. Furthermore, the employee is not required to pay taxes on these benefits.

Labor Code 4850 does not apply to City of San Jose Fire Fighters and Police Officers; they are not covered by PERS or the County Act. If a fire fighter or police officer in the City of San Jose is injured in the course of employment, he/she can receive workers compensation and a supplement provided by the city, the total amount equivalent to the employee's gross income. However, the supplement provided by the City is subject to taxation.

## ANALYSIS

The discussion of how to exclude supplemental disability income from taxation has been a topic of significant debate here in San Jose. Both city staff and our public safety unions have presented information in support of their positions on this matter. The overall intent of such an ordinance is to equalize the rights of public safety officers in San Jose with their counterparts throughout California. As stated above, public safety employees who are injured on the job, by virtue of their coverage under Labor Code 4850, not only receive their full salary in the form of disability payments but also do not have to pay taxes on those payments. The City of San Jose has already taken the important step of giving injured public safety officers their full salary through a combination of disability payments and a supplemental. The final step towards making such officers and their families whole is to legally classify the "supplemental" as compensation earned in the context of a workers compensation program. By doing so, such income will not have to be reported and therefore the officer would not be taxed for it.

Recently, the Internal Revenue Service offered an opinion (attached) in support of a chartered city in California that adopted a similar ordinance. This new information should give important leverage to the City of San Jose in our quest to enact a similar ordinance.

Given that such an ordinance has zero fiscal impact to the General Fund and recognizing the importance of helping injured officers and their families to have as much financial security possible, the City should act expeditiously in adopting such an ordinance here in San Jose. A sample ordinance has been provided to assist staff in their analysis.

Westlaw

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PLR 7920009, 1979 WL 54413 (IRS PLR)

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Internal Revenue Service (I.R.S.)  
Private Letter Ruling  
February 13, 1979

Section 104 -- Compensation for Injuries and Sickness (Excluded v. Not Excluded)

104.00-00 Compensation for Injuries and Sickness (Excluded v. Not Excluded)

104.02-00 Workmen's Compensation

T:I:I:1:1

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X = \*\*\*

Y = \*\*\*

Z = \*\*\*

Dear Sir or Madam:

This is in reply to your letter of September 26, 1978, and subsequent correspondence, in which you request rulings concerning the federal income tax consequences of certain payments which are made to City employees suffering from job-incurred disability.

Section 253 of X provides:

Except as hereinafter provided, any city employee who is disabled, whether temporarily or permanently, by injury or illness arising out of and in the course of his duties, shall be entitled to such medical, surgical, and hospital treatment, including nursing, medicines and medical and surgical supplies and apparatus as may be required on account of such injury or illness, the same to be provided by the city. Such employee shall become entitled during the period of such temporary disability, regardless of his period of service with the city, to leave of absence while so disabled without loss of salary, in lieu of temporary disability payments, if any, which would be payable under Division 4 of the Labor Code of the State of (Y) for the period of such disability, but not exceeding one year, or until such earlier date as he is retired upon a retirement allowance. Compensation and benefits payable to or on behalf of the employee under this section shall be reduced in the manner fixed by the city council, by the amount of any compensation and benefits payable to or on behalf of said employee under Division 4 of the Labor Code of the State of (Y). Compensation and benefits paid under this section shall be considered as in lieu of compensation and benefits payable to or on ac-

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count of said employee under said state law and shall be in satisfaction and discharge of the obligation of the city to pay such compensation and benefits under such state law. The benefits provided in this section shall be limited to full-time officers and employees of the city and, except as provided herein, shall not be extended to persons employed by the city on a seasonal, limited-term, part-time or substitute basis, or elective officers or appointive members of city boards and commissions. The city council, by ordinance enacted by two-thirds of all members thereof, may permit employees of the city, other than full-time officers and employees of the city, to receive all or a portion of the compensation and benefits provided to full-time officers and employees by the provisions of this section.

Certain other City employees receive comparable benefits under section 167 of X (repealed 12--31--76) which provided:

'Any city employee who is a member of the (Z) City Employees Retirement System and who shall become physically disabled by reason of any bodily injury received in the performance of his duty shall be entitled to such medical, surgical, and hospital treatment, including nursing, medicines and medical and surgical supplies and apparatus as may be required on account of such injury, the same to be provided by the city. Such injured employee shall receive full pay from the city during the continuance of his disability or until retired upon a retirement allowance, but not to exceed one year. Compensation and benefits payable to or on behalf of the employee under this section shall be reduced, in the manner fixed by the city council, by the amount of any compensation and benefits payable to or on behalf of said employee under Division 4 of the Labor Code of the State of (Y). Compensation and benefits paid under this section shall be considered as in lieu of compensation and benefits payable to or on account of said employee under said state law and shall be in satisfaction and discharge of the obligation of the city to pay such compensation and benefits under such state law.

The city council, by ordinance enacted by two-thirds of all members thereof, may permit employees of the city, other than those who are members of the retirement system, to receive all or a portion of the compensation and benefits provided to members of the retirement system by the provisions of this section.'

You state that the chief difference between section 253 and former section 167 is that former section 167 provides for full pay while temporarily or permanently disabled whereas section 253 provides for such pay while temporarily disabled. Under both sections, full salary continues until the employee (1) is no longer disabled, (2) is retired, or (3) one year lapses.

You further state that Division 4 of the Y Labor Code, to which reference is made in sections 167 and 253, is contained in Labor Code sections 3200--6002. Division 4 provides worker's compensation benefits for employees who are industrially injured. The benefits provided are less than full salary which is provided under Charter sections 253 and 167. Labor Code section 4652 excludes payment for

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the first three days of disability, whereas under Charter section 253 and 167 the employee receives full pay from the first day of disability. Labor Code sections 4653 and 4654 provide, respectively, for two-thirds pay for temporary total disability and temporary partial disability whereas Charter sections 253 and 167 provide full pay.

You request rulings whether (1) the payments to an employee under section 253 or former section 167 of X are excludable under section 104(a)(1) of the Code and (2) if the payments are excludable, whether the portion of the payment which is in excess of the amount of workmen's compensation benefits provided by sections 4652--4654 of the Y Labor Code are includible in gross income.

Section 104(a)(1) of the Code provides, in pertinent part and with certain exceptions not here pertinent, that gross income does not include amounts received under workmen's compensation acts as compensation for personal injuries or sickness.

Section 1.104-1(b) of the Income Tax Regulations states that section 104(a)(1) of the Code excludes from gross income amounts received by an employee under a workmen's compensation act or under a statute in the nature of a workmen's compensation act that provides compensation to the employee for personal injuries or sickness incurred in the course of employment. Section 104(a)(1) of the Code also applies to compensation which is paid under a workmen's compensation act to the survivor or survivors of a deceased employee. However, section 104(a)(1) does not apply to a retirement pension or annuity to the extent that it is determined by reference to the employee's age or length of service, or the employee's prior contributions, even though the employee's retirement is occasioned by an occupational injury or sickness. Section 104(a)(1) also does not apply to amounts which are received as compensation for a nonoccupational injury or sickness nor to amounts received as compensation for a nonoccupational injury or sickness to the extent that they are in excess of the amount provided in the applicable workmen's compensation act or acts.

You are of the opinion that since the Tax Court in *Blackburn v. Commissioner*, 15 T.C. 336 (1950), held that payments made under section 4800 of the Y Labor Code were not payments under a workmen's compensation act of a nature intended by Congress in section 22(b)(5) of the 1939 Code (now section 104(a)(1) of the 1954 Code) to be excluded from gross income, payments made under sections 253 and 167 of X which are similar to payments made under section 4800 of the Y Labor Code would also not be excluded from gross income. Further, you believe that if the Internal Revenue Service concludes that the payments made under sections 253 and 167 of X are excludable under section 104(a) of the Code, then section 1.104-1(b) of the regulations requires that any amount that is in excess of the amount provided in sections 4652--4654 of the Y Labor Code is not excludable from gross income.

The Internal Revenue Service in Rev. Rul. 68-10, 1968-1 C.B. 50, held that

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total payments made by a Y county to an employee under section 4850 and pursuant to section 4853 of the Y Labor Code, because of an occupational injury or illness arising out of and in the course of the employee's duties are in the nature of and in lieu of workmen's compensation, and such payments are excludable from the employee's gross income under section 104(a)(1) of the Code. Rev. Rul. 68-10 further held that the payments are excludable even if they are in excess of the normal disability benefits payable under a workmen's compensation act.

The facts presented in the instant case indicate that the provisions of sections 253 and 167 of X are very similar to the provisions of sections 4850 and 4853 of the Labor Code. Further, the Service is not following the position set forth in the Blackburn case but rather is following the position set forth in the case of Hawthorne v. City of Beverly Hills et al., 245 P.2d 352 (1952), which held that salary in lieu of temporary disability payments, to a fireman (under section 4850 of the Labor Code) who is a member of the State Employees' Retirement System, is not salary as such, but is compensation within the meaning of the workmen's compensation act.

Concerning your second ruling request, it should be noted that the Service does not give a narrow interpretation to the provisions in section 1.104-1(b) of the regulations that restricts the section 104(a)(1) exclusion to amounts that are not in excess of the applicable workmen's compensation act or acts. The Service has incorporated 'statutes in the nature of a workmen's compensation act', such as sections 252 and 167 of X, within the meaning of the phrase 'applicable workmen's compensation act or acts'. As long as benefits are received under a statute in the nature of a workmen's compensation act, they qualify for the exclusion of section 104(a)(1) of the Code regardless of the existence and applicability of formal workmen's compensation acts.

Accordingly, based on the information submitted, the entire payment made to an employee under sections 253 and 167 of X are excludable under section 104(a)(1) of the Code.

Sincerely yours,

Rudolf M. Planert

Acting Chief

Individual Income Tax Branch

This document may not be used or cited as precedent. Section 6110(j)(3) of the Internal Revenue Code.

END OF DOCUMENT

ORDINANCE NO:

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING CHAPTER 3.04 OF TITLE 3 OF THE SAN JOSE MUNICIPAL CODE TO PROVIDE FOR TEMPORARY DISABILITY COMPENSATION FOR CITY FIREFIGHTERS AND POLICE OFFICERS WHO ARE DISABLED IN THE PERFORMANCE OF THEIR DUTIES.

WHEREAS, Local 230 of the International Association of Firefighters, the San Jose Police Officers' Association, and the City have agreed through Memoranda of Understanding that City fire fighters and police officers who are disabled, whether temporarily or permanently, by injury or illness arising out of and in the course of their duties, are entitled to a leave of absence without loss of salary while so disabled; and

WHEREAS, fire fighters and police officers so disabled are entitled by Memoranda of Understanding to such leave of absence regardless of their period of service with the city; and

WHEREAS, the Memoranda of Understanding require that such leave of absence should not exceed one year, or that earlier date on which a particular fire fighter or police officer is retired on permanent disability pension and is actually receiving disability payments; and

WHEREAS, the Memoranda of Understanding require that such leave of absence should not be deemed to constitute family care and medical leave, as defined in Section 12945.2 of the Government Code, or to reduce the time authorized for family and medical care by Section 12945.2 of the Government Code; and

WHEREAS, Local 230 of the International Association of Firefighters, the San Jose Police Officers' Association, and the City agree that the aforementioned sums always have been intended to qualify and should qualify, under the Internal Revenue Service Code, as amounts received under workmen's compensation acts as compensation for personal injuries or sickness; and

WHEREAS, Local 230 of the International Association of Firefighters, the San Jose Police Officers' Association, and the City agree that the provisions in the fire and police Memoranda of Understanding are not sufficient to ensure that the aforementioned sums qualify, under the Internal Revenue Service Code, as amounts received under workmen's compensation acts as compensation for personal injuries or sickness; and

WHEREAS, Local 230 of the International Association of Firefighters, the San Jose Police Officers' Association, and the City agree these provisions regarding entitlement to these leaves of absence without loss of salary while so disabled should be incorporated into the Municipal Code so as to qualify as amounts received under workmen's compensation acts (Division IV of the Labor Code of the State of California) as compensation for personal injuries or sickness and therefore to qualify for certain tax exemptions under the Internal Revenue Service Code;



NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

Chapter 3.04 of Title 3 of the San Jose Municipal Code is amended by adding a part to be numbered and entitled and to read as follows:

**3.04.1310** Temporary disability compensation for city firefighters and police officers who are disabled in the performance of their duties.

(a) Whenever any San Jose City employee listed in subdivision (b) is disabled, by an injury or an illness arising out of and in the course of his or her duties, he or she shall be entitled, regardless of his or her period of service with the city, to temporary disability payments in an amount equal to his or her regular salary less the sum which would be deducted therefrom pursuant to Section 1504 of the Charter of the City of San Jose, while so disabled. Provided, however, that such employees must be entitled to temporary disability compensation under the workers' compensation provisions of Division I or Division IV of the Labor Code of the State of California during the entire time for which the payments are received.

(b) The persons eligible under subdivision (a) include all of the following:

(1) sworn city firefighters

(2) sworn city police officers.

(c) Payments made under subdivision (a) shall be considered as amounts received under worker's compensation acts (Division IV of the Labor Code of the State of California) and as payments in the nature of workers' compensation acts as compensation for personal injury incurred in the course of employment.

(d) Notwithstanding any provision of the California Labor Code in regard to a limitation on the duration of temporary disability benefits, the temporary disability benefits paid pursuant to this ordinance for a single injury causing temporary disability shall not be payable for a period in excess of five years from the date of injury. The total amount paid for a single injury for temporary disability shall not exceed the equivalent of 52 weeks of full-time hours.

(e) Receipt of such payments shall be subject to all alternative employment provisions set forth in the memoranda of understanding between the City and the exclusive bargaining representatives for the employees listed in subsection (b) above.

(f) No leave of absence taken pursuant to this section shall be deemed to constitute family care and medical leave, as defined in Section 12945.2 of the Government

Code, or to reduce the time authorized for family and medical care by Section 12946.2 of the Government Code.

Passed for Publication of Title this \_\_\_\_\_ day of \_\_\_\_\_, 2008,  
by the following vote:

Ayes:

Noes:

Absent:

Disqualified:

\_\_\_\_\_  
CHUCK REED  
Mayor

ATTEST:

\_\_\_\_\_  
LEE PRICE  
City Clerk

Firefighter Bill of Rights - Assembly Bill No. 220 (AB220) attached

Background:

On January 1, 2008, the state of California set forth into law the "Firefighter Bill of Rights" (AB220). This law sets forth a secure and consistent procedural standard for all firefighters. It is designed to apply common-sense principles of fairness and professionalism to the process of investigating and disciplining firefighters.

Since the enactment of the law, and as a matter of process, Local 230 has been attempting to incorporate this law into the current MOA and Discipline procedure manuals to no avail. The Fire Department and the Office of Employee Relations have refused to Meet and Confer or recognize the need to change our outdated and now illegal, investigative, discipline and appeal procedures.

Currently, Local 230 has been forced to petition with the courts to compel arbitration over this issue to implement the law of the land.

San Jose firefighters are and should be held to the highest public standard. Local 230 embraces these high standards but they must be applied fairly and equally.

By incorporating the Firefighter Bill of Rights (AB220) into the MOA and Discipline procedure manuals San Jose would come into compliance with the law and would ensure San Jose Firefighters will be treated under similar circumstances the same as all other firefighters in California.

This is a NO cost item offer.